Award No. 40
Docket No. 40

MOP File 380-1532
ORT File 1199

SPECIAL BOARD OF ADJUSTMENT NO. 117

ORDER OF RAILROAD TELEGRAPHERS
and
MISSOURI PACIFIC RAILROAD COMPANY

Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad that:

1. Carrier violated the agreement when on Friday, February 11, 1955, it permitted or required the regularly assigned occupant of the position of third shift CTC Telegrapher-Clerk-Leverman Gannon, Kansas City, Broadway Tower, to perform service on the position of third shift CTC Telegrapher-Clerk-Leverman, Kansas City-Minnesota Avenue, thereby depriving the regular incumbent of said third trick CTC-Telegrapher-Clerk-Leverman Position, M. H. Allen, of work and compensation due him.

2. M. H. Allen shall be compensated for 8 hours at the time and one-half rate for Friday, February 11, 1955, account being improperly relieved on said date, one of his regular assigned rest days.

OPINION OF BOARD: This claim concerns a request for reparations for 8 hours at the punitive rate for Friday, February 11, 1955, account claimant being improperly deprived of work on his regularly assigned position on the date in question. The claimant was the regularly assigned occupant of third shift CTC-Telegrapher-Clerk-Leverman at the Kansas City-Minnesota Avenue Station with assigned hours 12 midnight to 8:00 a.m.

February 11, 1955, was a Friday and one of the assigned rest days of a regular relief assignment. The occupant of this regular relief assignment was not available on the date in question. The Carrier required or permitted a telegrapher who was regularly assigned third trick CTC-Telegrapher-Clerk-Leverman at the Broadway Tower to work the claimant's position, filling the thus created vacancy by a senior idle extra telegrapher who was not qualified to perform the work on claimant's position.

The Organization took the position that in cases, as here, where a regularly assigned relief man was absent and there was no qualified senior idle extra employe available, that any work required on the rest day of the claimant should have been performed by him within the meaning of Rule 8, Section 2(j), and Rule 9.

The respondent took the position that Rule 8, Section 2(j), is not applicable here in that the position in question was filled by the claimant on the five days of his work week and that on the rest day in question a regularly assigned operator was used to perform the work on claimant's position and that,

since the day in question was an unassigned day, the claimant here did not have the right to perform the work, and that the temporary vacancy created due to the absence of the regularly assigned relief employe was properly filled.

The question to be resolved here -- was a regularly assigned rest day of the claimant properly filled in the absence and unavailability of the regular relief employe when it filled such "vacancy" by the use of another regular assigned employe? We think not. We are of the opinion and, in this particular case, adopt the findings of the Third Division of the National Railroad Adjustment Board in Award 5475 when it said:

> "The rule is firmly established by a long list of awards that work on rest days should be assigned in the first instance to the regularly assigned relief man, if there be such; secondly, to an extra man; and if an extra man is not available, to the regular occupant of the position on an overtime basis, Awards 4728-4815-5333. The regular occupant of the relief position or an extra man was not available. The work, therefore, belonged to claimant.
>
> "Carrier contends that the day in question was a part of the relief man's assignment and for that reason the stated rule does not apply. The principle is no different since the advent of the 40-hour week, there being simply two rest days instead of one. The day involved was a rest day of the claimant's position even though it was a part of the work of a regularly assigned relief man."

For the reasons stated, this claim is good; however, it is sustained only at the pro rata rate in accordance with awards legion in number which hold that the proper penalty for a day not worked is at the pro rata rate.

FINDINGS: The Special Board of Adjustment No. 117, upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as approved June 21, 1934.

That this Special Board of Adjustment has jurisdiction over the dispute involved herein; and

That the Carrier violated the effective agreement.

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AWARD

Claim sustained for 8 hours at the pro rata rate.

SPECIAL BOARD OF ADJUSTMENT NO. 117

Irvingston Smith - Chairman

C. O. Griffith - Employe Member

G. W. Johnson - Carrier Member

St. Louis, Missouri
July 31, 1956